

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of Northern States  
Power Company d/b/a Xcel Energy for  
Approval of a Renewable Development Fund  
Oversight Process

ISSUE DATE: April 3, 2002

DOCKET NO. E-002/M-00-1583

ORDER APPROVING SELECTED RDF  
PROJECTS AND REQUIRING FILING ON  
PROCESS IMPROVEMENTS

**PROCEDURAL HISTORY**

In 1994, the Minnesota Legislature passed Minn. Stat. § 116C.779, which among other things established a "renewable development fund" for Xcel Energy. The statute requires Xcel Energy to transfer to a renewable development account \$500,000 annually for each dry cask containing spent fuel that is located at Prairie Island after January 1, 1999.

In 1999, an advisory committee was formed to develop criteria and procedures for administering the fund. In an Order issued April 20, 2001, in Docket No. E-002/M-00-1583, the Commission adopted, with some modification, the criteria and process for project selection as proposed by the RDF advisory committee. Upon Commission approval of the committee's proposals, the advisory committee was dissolved and the Renewable Development Board was formed. The Board currently consists of two representatives from Xcel Energy and two representatives from the environmental community.

The Board's responsibilities under the approved plan are to review all applications for funding and make recommendations to Xcel. By terms of the approved plan, Xcel would be bound by the Board's final selections, unless the Company requested reconsideration within 14 days, and would submit the final selections for Commission review and approval. Following Commission approval of the final selections, Xcel would submit final contracts for Commission approval.

On July 16, 2001, Xcel Energy issued its request for proposals (RFP) for the first cycle of funding for its renewable development fund.

On November 2, 2001, Xcel Energy on behalf of the Board submitted the final selection for Category A projects. Category A projects are those projects that will result in the actual development of new, commercially viable renewable resources.

On November 19, 2001, the Xcel Energy on behalf of the Board submitted the final selection for Category B and C projects. Category B projects are those that advance research and development of technologies that are in a stage of development between the fully commercial scale and the fundamental (experimental) research stage. Projects in this category could result in small-scale energy production. Category C projects are those that involve basic fundamental experimental research and development of "pre-commercial" renewable technologies in the early stages of development.

Under the renewable development fund criteria, 60 percent of the funding is to be awarded to Category A projects, 20 percent to Category B projects, and 20 percent to Category C projects. In the first funding cycle, the Board decided to combine funding for Category B and C projects and to distribute the funds as one amount.

On December 3, 2001, the Department of Commerce (Department) filed comments on the final selection of Category A projects. It noted concern over costs for some projects. However, it recommended that Xcel proceed to contract negotiations. The Department indicated that it would examine costs once grant contracts and purchased power agreements (PPAs) are negotiated with the selected project bidders. The Department filed no comments on the final selection of Category B and C projects within the designated time period (30 days after the selection was filed, by December 19). However, in response to the issues raised by Itasca Power, the Department did file comments.

On December 19, 2001, Itasca Power Company filed comments on the selection of Category B and C projects. Itasca Power, in cooperation with the University of Minnesota, submitted a project proposal in Category A for a vegetable oil biomass project. The project proposal by Itasca Power was re-categorized by the Board from Category A to Category C after the initial screening of projects.

On December 31, the Commission issued a notice seeking comments on the issues raised by Itasca Power regarding the selection of Category B and C projects.

On January 14, 2002, Xcel Energy filed reply comments in response to Itasca.

On January 22, 2002, the Department filed comments in response to Itasca.

On February 8, and February 12, Itasca Power and the Department, respectively, filed additional comments.

The Commission met on February 21, 2002 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. BACKGROUND**

In its Order issued April 20, 2001 in Docket No. E-002/M-00-1583, the Commission adopted, with some modification, the criteria and process for project selection as proposed by the RDF advisory committee. As directed by the Order, the advisory committee dissolved and the Renewable Development Board was formed. Xcel and the environmental community have each appointed two members to the Renewable Development Fund Board (RDF Board).

The RDF Board's responsibilities under the approved plan are to review all applications for funding and make recommendations to Xcel. The Board has done so. Under the approved plan, Xcel is bound by the Board's final selections (recommendations), unless the Company requests reconsideration within 14 days, and is to submit the final selections for Commission review and approval. Xcel did not request reconsideration of the Board's final selections. Instead, the Company has submitted the final selections for Commission review and approval.<sup>1</sup>

### **II. THE RECOMMENDATIONS OF THE RDF BOARD AND XCEL**

In the first RDF funding cycle, Xcel accumulated \$16.5 million: \$500,000 per year for each dry cask containing spent fuel that is located at the independent spent fuel storage installation at Prairie Island after January 1, 1999, as required by Minn. Stat. § 116C.779. According to the Commission's approved plan, 60 percent of the total funding (\$16.5 million) is to be awarded to Category A projects: \$9.9 million.

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<sup>1</sup> Following Commission approval of the final selections, Xcel is to submit final contracts for Commission approval. See *In the Matter of the Request of Northern States Power Company d/b/a Xcel Energy for Approval of a Renewable Development Fund Oversight Process*, Docket No. E-002/M-00-1583, ORDER ADOPTING PROPOSAL FOR OVERSIGHT AND OPERATION OF RENEWABLE DEVELOPMENT FUND (April 20, 2001) at page 4. Expenditures from the RDF may only be made after approval by order of the public utilities commission upon a petition by the public utility. Minn. Stat. § Minn. Stat. § 116C.779.

On November 2 and November 17, 2001, Xcel submitted the final selections for Category A and Categories B and C, respectively.<sup>2</sup>

**A. Category A: Projects to Develop New Commercially Viable Renewable Resources**

Before issuing its RFP for the first cycle of funding from the RDF, the Board adopted guidelines similar to those approved by the Commission in its April 20, 2001 Order in this matter. To provide further guidance for preparing proposals and determining eligibility, the Board announced that it would give preference to proposals that would

- promote economic development in Minnesota;
- include sponsorship by the Mdewankanton tribe, whose land abuts the grounds of the Prairie Island plant;
- propose realistic budgets and use appropriate resource to conduct the project;
- provide additional value by leveraging requested RDF funds with other sources;
- offer reasonable price in comparison to conventional electricity resources;
- clearly describe strategies for dissemination, use and replication of projects; and
- follow geographic priorities of : (1) projects located in Minnesota and in Xcel's service territory, (2) located in Minnesota, (3) located within Xcel's service territory in North Dakota, South Dakota, Wisconsin or Michigan.

On July 16, 2001, Xcel issued an RFP for Category A projects that would produce energy from biomass, hydro, solar, and wind facilities and received 29 proposals (requesting a total of \$60 million) on August 20, 2001.

On September 7, 2001, Xcel reported that the Board had completed the initial screening of proposals and, in compliance with the Commission time schedule has identified the list (long list) of projects that have been determined to be eligible for funding from the Renewable Development Fund established in Minn. Stat. § 116C.779. The Board had found four of the 29 Category A proposals ineligible and removed from the list.

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<sup>2</sup> In the Commission's April 20, 2001 Order, the Commission approved three categories of RDF projects: Category A, projects that will result in the actual development of new commercially viable renewable resources; Category B, projects that advance research and development technologies that are in a stage of development between the fully commercial scale and the experimental research stage; and Category C, those that involve basic, fundamental experimental research and development of "pre-commercial" renewable technologies in the early stages of development. Per the Commission's approved plan, 60 percent of the funding is to be awarded to Category A projects, 20 percent to Category B projects, and 20 percent to Category C projects. In the first funding cycle, the Board decided to combine funding for Category B and C projects and to distribute the funds as one amount.

On October 22, 2001, Xcel reported that the Board had completed the initial scoring of eligible proposals and identified nine Category A projects, its short-list, that would now proceed forward through final detailed evaluation. The Company reported the Board's short-list for information purposes only because under the Commission-approved process, no Commission action was required at this stage.

Xcel also reported that in evaluating the Category A proposals the following process was followed:

1. Upon receiving proposals on August 10, 2001, Xcel Energy staff provided one complete set of proposals to each of the four members of the RDF Advisory Board.
2. Xcel Energy staff developed spreadsheets containing information about all of the proposals. The spreadsheets were programmed to automate the process of screening and scoring proposals.
3. The scoring spreadsheet was distributed to each of the RDF Advisory Board members who reviewed and scored each proposal independently.
4. Xcel Energy staff conducted a cost-effectiveness evaluation of proposals in Category A and incorporated the results of this evaluation into the scoring spreadsheets.
5. The Advisory Board met in person and conducted conference calls to review and discuss the merits of each proposal within Category A.
6. Xcel Energy staff incorporated the scores assigned by each Board member into a master scoring spreadsheet that calculated average scores from each of the four Board members' individual scores.
7. All proposals were ranked according to their total scores, and by technology type.
8. The Board reviewed the results of the master scoring spreadsheet and made funding selections based on the resultant rankings, as well as its stated preference to fund a diverse mix and number of renewable energy technologies.

As described in the RFP, each proposal within Category A was evaluated and scored based on its responsiveness to four evaluation criteria - 1) Project Approach & Work Plan, 2) Project Team, 3) Economic Development Impact, and 4) Cost-effectiveness. Each of the Advisory Board members assigned a score that was multiplied by a specific weighting factor for the four criteria, as shown below. This scoring matrix applied to all criteria and project types except the cost-effectiveness criterion for Category A projects.

In making funding decisions, the Board considered the results of the scoring matrix as well as its desire to select a diverse group of renewable technology types. The Board also considered how combinations of different proposals aggregated to the total amount of funding available for Category A, \$9.9 Million.

Eight of the nine proposals that were included on the short-list were selected for funding and submitted for approval on November 2, 2001. The one project short-listed but not selected was not selected because the funding amount requested for that project did not fit well with other short-listed projects and the total amount of funding available in that category.

The Board's final selections (accepted by Xcel and recommended by that company as well) were as follows:

**Proposals selected for funding - Category A**

	<b>Technology Type</b>	<b>Capacity (kW)</b>	<b>Funding Amount</b>
<b>Greden Dairy &amp; Crop Farm</b>	<b>Biomass</b>	<b>100</b>	<b>\$80,000</b>
<b>Minnesota Corn Processors, Inc.</b>	<b>Biomass</b>	<b>580</b>	<b>\$400,000</b>
<b>AnAerobics, Inc.</b>	<b>Biomass</b>	<b>1,700</b>	<b>\$1,300,000</b>
<b>Crown Hydro, LLC</b>	<b>Hydro</b>	<b>3,200</b>	<b>\$5,100,000</b>
<b>MN Department of Commerce</b>	<b>Solar</b>	<b>400</b>	<b>\$1,150,000</b>
<b>Science Museum of Minnesota</b>	<b>Solar</b>	<b>8</b>	<b>\$100,000</b>
<b>Project Resources Corporation</b>	<b>Wind</b>	<b>5,400</b>	<b>\$900,000</b>
<b>Pipestone-Jasper School System</b>	<b>Wind</b>	<b>900</b>	<b>\$752,835</b>
		<b>12,288</b>	<b>\$9,782,835</b>

No party objected to the Board's final selections for Category A.

**B. Categories B and C: Experimental and Research and Development Projects**

On July 16, 2001, Xcel issued an RFP for Category B and C projects. Xcel's RFP described Categories B and C as follows:

- Category B - projects that advance research and development of technologies that are in a stage of development between the fully commercial scale and the fundamental (experimental) research stage.

- Category C - projects that involve basic fundamental experimental research and development of "pre-commercial" renewable technologies in the early stages of development.

The Board also recited the seven bulleted preferences noted above on page 4 for Category A projects in its RFP and applied them in its evaluation of proposals.

The Board explained that it evaluated Category B and C proposals separately from those in Category A because many of the criteria applicable to measuring commercial viability of a project simply did not apply to B and C projects that involved exploration of developing technologies in a research and development form.

On August 20, 2001, the Board received a combined total of 41 proposals for these two categories (requesting a total of \$40 million).

On September 7, 2001, Xcel reported that the Board had completed the initial screening of proposals and, in compliance with the Commission time schedule had identified the list (long list) of projects that have been determined to be eligible for RDF funding. The Board screened each proposal submitted for eligibility, completeness, and feasibility. The Board found ineligible and removed from the list 6 of the 27 Category B proposals and 1 of the 20 Category C proposals.

On October 22, 2001, Xcel reported that many of the Category B and C projects proposed research that was beyond the technical expertise of the Board and Xcel Energy staff. Consequently, Xcel reported, the Board retained the services of the National Renewable Energy Laboratory (NREL) and the Oak Ridge National Laboratory (ORNL) to assist in reviewing certain proposals. Because the input requested from these laboratories had not arrived in time to be incorporated into the Board's analysis, the Board decided that all projects eligible for Categories B and C would be placed on the short-list and proceed for further evaluation: 22 Category B proposals and 19 Category C proposals. The Company reported the Board's short-list for information purposes only because under the Commission-approved process, no Commission action was required at this stage.

On November 19, 2001, Xcel reported the Board's final selection of Category B and C proposals. The Company submitted these selections for Commission approval. Xcel also reported that in evaluating the Category B and C proposals the following process was followed:

1. Upon receiving proposals on August 10, 2001, Xcel Energy staff provided one complete set of proposals to each of the four members of the RDF Advisory Board.
2. Xcel Energy retained the services of PA Consulting, the National Renewable Energy Laboratory (NREL), and Oak Ridge National Laboratory (ORNL) to assist staff with synthesizing and evaluating the Category B and C proposals.
3. Xcel Energy staff developed spreadsheets containing information about all of the proposals. The spreadsheets were programmed to automate the process of screening and scoring proposals.

4. The scoring spreadsheet was distributed to each of the RDF Advisory Board members who reviewed and scored each proposal independently.
5. The Advisory Board met in person and conducted conference calls to review and discuss the merits of each proposal within Categories B and C.
6. The Advisory Board discovered that the scoring system did not work as well with Category B and C proposals as it did with Category A proposals. Although the criteria were valid, the scoring system seemed to place too much emphasis on non-scientific criteria. Consequently, in determining winning Category B and C proposals, the Board reduced its reliance on the scoring formula and relied more on the following:
  - the criteria themselves;
  - the advice from NREL and ORNL;
  - a preference to fund locally (within NSP's service area);
  - a preference for biomass or biomass enhancing technology because of the agricultural base of the service area; and
  - a preference for strong links to renewable energy.

Xcel reported that the Board made funding selections based on input received from NREL and ORNL and its own experience and review of proposals received, as well as its preference to fund a diverse mix and number of renewable energy technologies.

Each proposal within Category B and C was evaluated and scored based on its responsiveness to four evaluation criteria: (1) project approach and work plan, (2) project team, (3) economic development impact, and (4) cost-effectiveness.

As stated in the RFP for Categories B and C, the numeric results from the bid evaluation were considered by the Board in awarding selection, but were not binding on the Board. The Board retained the right to consider other factors consistent with the best overall use of the fund that the Board in its judgment determined appropriate. The Board also considered

- the degree to which requested funding leverages other investment sources;
- the degree to which the amount of RDF funding corresponded to the identified goals and objectives of the project and the anticipated value and benefits of the project; and
- the proportion of the budget dedicated to direct expenses (labor and materials) relative to overhead and other administrative costs.

The Board selected 11 projects for Categories B and C, comprising three renewable technologies, 7 biomass, 1 solar, and 3 wind projects, a total funding amount of almost \$6.3 million. The following table identifies proposals selected for funding.



**Proposals selected for funding - Categories B & C**

<b>Bidder</b>	<b>Technology type</b>	<b>Funding amount</b>
<b>Sebesta Blomberg &amp; Associates</b>	<b>Biomass</b>	<b>\$738,654</b>
<b>Energy Performance Systems</b>	<b>Biomass</b>	<b>\$266,508</b>
<b>Un.of ND Energy&amp;Environmental Research Center (EERC)</b>	<b>Biomass</b>	<b>\$444,478</b>
<b>NREL (MagStar Technologies and Community Power Corp.)</b>	<b>Biomass</b>	<b>\$638,635</b>
<b>Un.of ND Energy&amp;Environmental Research Center (EERC)</b>	<b>Biomass</b>	<b>\$60,000</b>
<b>D.H. Blattner&amp;Sons (Elgood May Corp., Global Energy Concepts, and Dakota Machine)</b>	<b>Wind</b>	<b>\$68,470</b>
<b>Colorado School of Mines (NREL)</b>	<b>Biomass</b>	<b>\$1,116,742</b>
<b>Un.of ND Energy&amp;Environmental Research Center (EERC)</b>	<b>Biomass</b>	<b>\$1,250,142</b>
<b>NREL</b>	<b>Solar</b>	<b>\$934,628</b>
<b>Global Energy Concepts</b>	<b>Wind</b>	<b>\$75,000</b>
<b>Un.of MN Dept. Electrical Engineering (Erland Persson Co., Analog Power Design)</b>	<b>Wind</b>	<b>\$654,309</b>
		<b>\$6,247,566</b>

## **C. Itasca Power Company's Objections to Final Selections**

### **1. ITP's Initial Objections**

In comments filed December 19, 2001. Itasca Power Company (Itasca, ITP or the company), one of the bidders not selected for Categories B and C, raised four objections to the selection process.

First, ITP objected that its proposal had been moved from Category A to Categories B and C without explanation.

Second, ITP noted that in filing the final selections Xcel described only the winning proposals. The company stated that without information on how the projects scored, the process was not transparent. ITP stated that from the narrative describing the selection process it appeared that decisions were made primarily based on judgement rather than on objective criteria. The company asked to see how all the projects in the B and C categories scored and how this led to the winning proposals.

Third, ITP objected to the selection of the Beck proposal to study the feasibility of modifying a coal plant to burn whole trees. The company asserted that such a study had been done ten years ago. The company also questioned whether the Beck proposal was evaluated as a biomass project, since it looked at adding a combined-cycle gas turbine system, a non-biomass fuel source. Finally, ITP noted that the Beck proposal involved repowering a plant that would have been used in ITP's study. The company wondered whether this led the Board to view the two projects as mutually exclusive and, if so, why the Beck study would be more beneficial to area farmers than ITP's.

Fourth, ITP objected to NREL and ORNL being evaluators as well as bidders in this process. The company objected that even if NREL and ORNL did not evaluate their own proposals, NREL and ORNL should not evaluate proposals that would be competitors to their own proposals.

### **2. Xcel's Response to Itasca's Initial Objections**

#### **a. Moving Itasca's project from Category A to Category B/C**

Xcel noted that Itasca submitted its project under both Category A and Category C (see Itasca's Grant Application attached to Xcel's January 14 reply comments). Xcel explained that it was appropriate to consider Itasca's project only under Category C because Itasca only requested funding for Category C work, the length of the project for funding purposes only dealt with Category C, and the project description emphasized the research phase of the proposal.

Further, Xcel stated, Itasca's project was ineligible for consideration in Category A and would have been screened out for two reasons: (1) Itasca's commercialization proposal depended on additional research and development and therefore failed the Category A requirement that proposals be commercially viable (see the renewable fund request for proposals, page 7); and (2) the energy

price for Itasca's long-range project was much higher than the threshold utilized by the Board to screen Category A projects; none of the Category A projects that were short-listed had an energy price higher than \$65/MWh.

*b. Itasca's complaint that the Selection Report did not include the selection criteria for Category B and Category C projects*

Xcel responded that the Board used a deliberative process rather than strict application of the five-criterion matrix from the RFP for Category B and C projects. The Board was guided by the five-criterion matrix. However, it found a matrix approach to be frustrating and inaccurate as applied to research and development type projects. Unlike Category A, where the cost and the benefit of commercial projects could be more easily quantified, the Board ran into difficulty trying to numerically rank research projects in Category B and C.

Xcel contended that the Board's process was consistent with the request for proposals (RFP) and the Commission-approved selection process, although the Board's decisions were based in part on informed judgement. Xcel noted that the RFP did not require the use of the matrix approach, citing page 22 of the RFP which states: "The Board shall retain the right to consider other factors consistent with the best overall use of the Fund which the Board in its judgement determines appropriate, including the right to reject all bids." Therefore, Xcel stated, the Board discussed each project individually, took into account all information available (including the observations provided by NREL and ORNL), and made reasoned judgments based on that information.

Finally, the Board explained the special emphasis given biomass or biomass enhancing technologies as follows:

(1) research and development on biomass power is necessary to enhance biomass energy as a viable alternative in Minnesota; recent legislation sets goals to increase biomass energy production in the state yet the current cost of biomass energy is much higher than other technologies;

(2) Minnesota is an agricultural state; the legislation recognized the economic development potential surrounding agriculture-based energy development; economic development was one of the criterion from the RFP and enhancing biomass energy production could increase economic development locally; and

(3) the Board considered co-firing of biomass with fossil fuels to have the potential to increase the use of biomass power in the foreseeable future; the need for additional research on the effects of co-firing on equipment is necessary to develop this potential; thus, while difficult to quantify through the matrix approach, this consideration was viewed by the Board to be both desirable and consistent with the RFP.

c. Why the Beck Proposal was Considered a Biomass Project and Related Concern

Xcel explained that the Beck project was properly considered a biomass project (despite containing potential for a combined cycle turbine) because the primary fuel considered for the RDF funding request was related to biomass.

Regarding Itasca's concern that the Board may have viewed Beck's and Itasca's proposal as mutually exclusive, Xcel noted that although both projects listed the Granite Falls site as part of their proposal, the proposals were in such differing phases of development that the Board concluded it did not need to eliminate one if the other was considered. Accordingly, each was reviewed on its own merit and both were considered for selection.

d. Concern About the Involvement of NREL and ORNL in the Evaluation Process

Xcel clarified that ORNL was not involved with any of the proposals responding to the RFP, and was retained specifically to review those proposals involving NREL. The NREL evaluators were screened from NREL's proposals so as to avoid any conflict of interest. Also, prior to evaluating each proposal, every NREL reviewer was required to sign both a "Confidentiality Agreement" and a "Personal Conflicts of Interest Representation." Xcel concluded that the NREL and ORNL evaluations were helpful to the Board's deliberations and provided a good source of information in areas beyond its expertise.

2. The Department's Response to Itasca's Initial Objections

The Department addressed Itasca's concerns about its elimination from final selection and about the fairness of the Category B/C process in general.

a. Itasca's Elimination

The Department concluded that the elimination of Itasca's project from the final selection appears to have been appropriate. Xcel's January 15 letter explained that Itasca's proposal did not qualify for Category A because it was not commercially tested and its proposed energy price was too high. Xcel also explained that the Beck project was evaluated independently of the Itasca project. Specifically, the Itasca project was placed in Category C, while the Beck project was placed in Category B. The Department concluded that: (1) Itasca's proposal did not qualify for Category A, (2) it was not unfairly rejected in favor of the Beck project, and (3) the reasons for rejecting the Itasca proposal seemed reasonable.

The Department concluded the reasons cited by Xcel for not selecting the Itasca project seemed reasonable. In response to the Department's Information Request No. 7(e), Xcel stated the following reasons for not selecting the project:

No documentation of technical viability of use of vegetable oil as fuel source. Concerns that vegetable oil combustion will result in high levels of NOx and particulate. Commercial success of technology depends on price of chosen vegetable oil. Proposed workplan was adequate, but no technical products were described, and the schedule seemed short. The proposal lacked major deliverables and reports. Board concluded that proposal did not advance technology enough relative to other projects.

b. Itasca's Overall Fairness Concerns

The Department agreed with Itasca that the selection process appears to be somewhat unfair in that it departed significantly from the evaluation guidelines stated in the RFP. The Department also agreed that evaluation of the proposals appears to be based on the subjective view of each Board member rather than on objective criteria that could be reviewed by a third party.

The Department concluded that the participation of NREL and ORNL in the evaluation of the project proposals did not constitute conflict of interest because ORNL did not submit any proposals in Category B or C, NREL did not evaluate any proposal in which NREL was a participant, and NREL's reviewers were required to sign a "Confidentiality Agreement" and a "Personal Conflict of Interest Representation." The Department did recommend, however, that in the future Xcel should attempt to use evaluators that do not submit proposals.

The Department also stated that it did not have sufficient information to determine whether some proposals (not Itasca's) were improperly eliminated. The Department stated that upon receiving the needed information, the Department may recommend that certain proposals be added or eliminated from the final selection.

Finally, the Department recommended that the RDF process should continue without any formal investigation.

4. Itasca Power Company's Additional Comments

Itasca Power acknowledged Xcel's and the Departments responses and stated that except for being compared to a project (Beck's) utilizing the same facility, it did not question its elimination from the final awards.

Itasca reiterated its concerns about the selection process, however: 1) that evaluators were chosen that had an interest in the proceedings (NREL) and 2) that criteria were changed during the selection process. The Company recommended that the Commission stop the selection process and direct Xcel to rebid the project with a corrected RFP.

Finally, Itasca raised a concern that the Department was a sponsor of one of the selected projects and an evaluator of comments regarding the selection process.

### **III. COMMISSION ANALYSIS AND ACTION**

#### **A. Selections for Category A Projects**

The Commission finds that these selections are reasonable and will approve them.

#### **B. Selections of Categories B and C**

Only one eliminated applicant complained about not being selected, Itasca Power Company, and after receiving explanations from Xcel about the Board process and reasons for not selecting Itasca's project, raised only one objection: that it had been compared to a project (Beck's) using the same facility.

The Commission has considered Itasca's objection and does not find it persuasive. Xcel has stated that, in fact, the Board did not consider the two proposals (Itasca's and Beck's) as mutually exclusive because although both projects listed the Granite Falls site as part of their proposal, the proposals were in such differing phases of development that the Board concluded it did not need to eliminate one if the other were considered. The Company's report that each project (Beck's and Itasca's) was reviewed on their own merit and considered for selection has not been effectively challenged.

Both the Department and Itasca objected to the Board varying from the objective approach called for in the RFP and substituting subjective judgment for objective criteria. Xcel acknowledged that the Board learned a great deal that will be useful in future processes, but denied that the Board's approach was inconsistent with the RFP. Xcel reported that the Board found that the five-factor matrix approach (fixed scoring system) in the RFP did not work well for research and development-type proposals, since (unlike Category A projects) they did not involve easily quantified costs and benefits. The Board decided, therefore, to use the five-factor criteria from the RFP, not as a fixed scoring system, but as a guide to discuss and evaluate projects.

Xcel noted that the RFP itself did not tie the Board exclusively to an objective evaluation, stating on page 22:

The Board shall retain the right to consider other factors consistent with the overall use of the Fund which the Board in its judgement determines appropriate, including the right reject all bids.

The RFP could have been clearer about the actual evaluation process for Categories B and C and presumably will be in future rounds. The Commission does not believe, however, that it would be appropriate to halt the process and require re-bidding, as requested by Itasca. The reasons advanced by Xcel and the Board for moving from a strictly objective approach when addressing the

research and development projects (Categories B and C) are plausible, appear to have been done conscientiously and in good faith, and no applicant has shown to have been prejudiced by the Board's modified approach to Categories B and C.

In these circumstances, the Commission will approve the selections for Category B/C, as recommended by the Board and Xcel.

### **C. Concerns for the Fairness of Future Processes**

As previously discussed, Itasca and the Department both expressed concerns for the fairness of the selection process and the Board itself stated that it had learned much that would be helpful in improving the next evaluation/selection process.

To ensure adequate follow-up, the Commission will require the Board to file, prior to the start of the second funding cycle for the RFD fund, a description of the lessons learned in the first round funding and proposed changes to the process for the second round of funding. To ensure that issues raised by Itasca and the Department are considered, the Commission will encourage the parties to comment on how the criteria to be used in selecting projects should be stated in the RFP.

### **D. Role of the Department**

Regarding Itasca's suggestion that it was improper for the Department to comment on the validity of a selection process that had selected a proposal from the Department, the Commission finds that the Department has done nothing improper. The Department openly discussed its limited involvement in this docket and requested direction from the Commission on how to proceed. Further, the Department did not file comments with the Board or the Commission regarding the RDF applications or in any other way participate in the Board's evaluation and selection of RFD projects.

Finally, the Department has noted that there is a clear and strictly observed organizational separation between the Department division that reviewed the RDF process and procedures AFTER the Board and Xcel had made their selection<sup>3</sup> and the Department division that sponsored a Category A solar proposal selected by the Board and Xcel in this matter.<sup>4</sup>

The Department has requested guidance from the Commission and stated that it would not file further comments in this docket unless the Commission directed to do so.

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<sup>3</sup> The Department's Electric Unit in the Energy Planning and Advocacy Division (EPA).

<sup>4</sup> The State Energy Office (SEO).

The Commission wishes to receive the benefit of the Department's Electric Unit's input and expertise while preserving the Department from any appearance of conflict of interest due to the involvement of the SEO in this docket. To achieve those two goals and eliminate ambiguity on this subject for the next stage of this proceeding, the Commission will direct the Department's Electric Unit to review and comment on grant contracts and PPAs filed in the RDF process, except for those signed by the State Energy Office (SEO).

### **ORDER**

1. The Category A projects, as selected and proposed by the Board and Xcel, are approved.
2. The Category B and C projects, as selected and proposed by the Board and Xcel, are approved.
3. Before the start of the second funding cycle for the RDF fund, the Board shall file a description of the lessons learned in the first round funding and proposed changes to the process for the second round of funding. To ensure that issues raised by Itasca and the Department are considered, the Commission will encourage the parties to comment on how the criteria to be used in selecting projects should be stated in the Request for Proposals (RFP).
4. The Department shall review and comment on grant contracts and PPAs filed in the RDF process, except for those signed by the State Energy Office (SEO) of the Department of Commerce.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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